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CLERKIN THE
Supreme Court of the United States

OCTOBER TERM, 1948.

No. 436, Misc.

HENRY A. CULVER AND THOMAS GOBEL CULVER;
LUCILE CULVER BONN AND MABEL CULVER
WATSON, INDIVIDUALLY AND AS EXECUTRICES UNDER THE
WILL OF FANNIE CULVER IVERSON,

*Petitioners,**vs.*

THE CARTER OIL COMPANY, T. E. CULVER, COR-
DIE CULVER MARKHAM, EDGAR T. CULVER,
L. G. ROGERS, W. O. ALLEN, W. F. SCHUERMEYER,
C. R. BENNETT, A. GORDON MASON, T. CONWAY
McMURRAY, A. P. HEINZE, J. F. HARMAN, JR., AND
JOHN C. ROGERS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT.

**MOTION OF RESPONDENTS TO FILE ORDER OF
UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT.**

WILLIAM M. ACTON,
605 Temple Building,
Danville, Illinois,
Counsel for Respondents.

WALTER DAVISON,
HARRY L. ARNOLD,
R. T. SWEENEY,
J. D. RUARK,
L. C. FLOURNOY, JR.,
E. R. MORTON,

Of Counsel for Respondents.



IN THE
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McMURRAY, A. P. HEINZE, J. F. HARMAN, JR., AND
JOHN C. ROGERS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT.

**MOTION OF RESPONDENTS FOR LEAVE TO FILE
CERTIFIED COPY OF ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIR-
CUIT, ENTERED IN THIS CAUSE ON APRIL 11, 1949.**

And now come the respondents, by William M. Acton,
their counsel, and move the Court for leave to file herein
certified copy of an order entered by the United States

Court of Appeals for the Sixth Circuit since the filing of the brief of the respondents in objection to the petition for writ of certiorari, and a copy of said order is attached hereto as an appendix to this motion, and in support of this motion show to the Court as follows:

1. That the basis of this petition for writ of certiorari is that the United States Court of Appeals for the Sixth Circuit refused to permit the appellants to prosecute the appeal in *forma pauperis* and that the decision is in conflict with the decision of this Court in *Adkins v. DuPont*, No. 1, Misc., entered on November 22, 1948, and *Roberts v. Memphis Street Railway Company*, entered on December 13, 1948.

2. That at the bottom of page 4 and the top of page 5 of the written petition of the petitioners filed herein it appears that, in addition to objection to the poverty affidavit, these respondents in the Court of Appeals also objected to said motion of appellants to prosecute in *forma pauperis* for the additional reason—

“that petitioners’ claim was without merit and frivolous;”

and petitioners in the petition filed herein stated (page 4, their petition) that—

“It is manifest that the court denied the motion because that court, like many other such courts, had held for many years that counsel also must file the pauper’s affidavit and because this counsel would not pay the expense of printing the record—for if it had had other reasons, on the merits, for denying the motion the court would have announced the reasons.”

The petitioners further showed (page 5)—

“February 28, 1948, petitioners moved the Circuit Court of Appeals for rehearing of its order, to comply with the mandate of this Court in the Roberts case. The Court, being in recess until April, was unable to act on

the motion, the Clerk having advised counsel that the Chief Judge had instructed that it be held until the court convenes April 4th; and petitioners' time for filing this petition expires March 8, 1949."

The respondents filed objections to appellants' motion of February 28, 1948, above mentioned, and pointed out to the Court of Appeals that notwithstanding the pauper affidavit was sufficient as held by this Court in the Adkins and Roberts cases, that those decisions were not controlling, for the reason that in this case there was not a scintilla of evidence to prove the fraud alleged in the complaint, and that the appeal was wholly frivolous and entirely without merit, and that the motion for rehearing should be denied because the record did not show a meritorious cause of action or any questions of law or fact that even cast any doubt upon the judgment of the District Court from which the appeal was taken.

3. Since the petition for certiorari was filed in this case the United States Court of Appeals for the Sixth Circuit, on April 11, 1949, denied said motion of appellants for a rehearing on the ground that the prior order of dismissal was in conflict with the order of this Court in the Adkins and Roberts cases, and the respondents present a certified copy of the order of said Court and ask leave to file the same, and the same is in words and figures as follows, to-wit:

"The motion for rehearing 'To comply with mandate of Supreme Court of the U. S. in *Roberts v. The Memphis Street Railway Co.*', so entitled and filed on March 1, 1949, being without merit, is denied."

Respectfully submitted,

WILLIAM M. ACTON,
605 Temple Building,
Danville, Illinois,
Counsel for Respondents.